

APPENDIX D
ELECTRIC SERVICE AGREEMENT, VERSION 1, EFFECTIVE: 11/2/2022



**ELECTRIC SERVICE AGREEMENT
BETWEEN
[CUSTOMER NAME]
AND
THE CITY AND COUNTY OF SAN FRANCISCO**

This Electric Service Agreement (“ESA”), dated as of _____, is by and between the [CUSTOMER NAME] (“Customer”), and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), acting by and through its Public Utilities Commission (“SFPUC”). Customer and City, are sometimes referred to as a “Party” and are collectively referred to as the “Parties.”

WHEREAS, Customer and City have agreed that City will provide Electric Service to Customer’s Property;

NOW, therefore, the Parties agree as follows:

Section 1. DEFINITIONS

The capitalized terms in this ESA shall have the meaning set forth below. Capitalized terms that are not defined below have the definitions set forth in the SFPUC Rules.

- a. “Interconnection Costs” means the costs for PG&E or City to install new equipment, and other PG&E charges and fees, required under the WDSA to interconnect the Property with the PG&E distribution system.
- b. “Intervening Facilities Control Agreement” means an agreement between City and Customer granting City control over any of Customer’s electrical facilities that may be necessary for City to serve Customer pursuant to the WDSA.
- c. “PG&E” means Pacific Gas and Electric Company.
- d. “Property” means that certain property owned or leased by Customer and set forth in Exhibit A.
- e. “Nonbypassable Charges” or “Departing Load Charges” means charges that PG&E may recover from Customer pursuant to California law.
- f. “Service Initiation Fee” means the fee required by PG&E to reserve capacity and initiate

distribution service under the WDSA.

g. “SFPUC Rules” means *SFPUC Rules & Regulations Governing Electric Service* as adopted by the SFPUC and as may be amended from time-to-time.

h. “SFPUC Rate Schedules” means *SFPUC Rate Schedules & Fees for Water, Power, and Sewer Service* as adopted by the SFPUC and as may be amended from time-to-time.

i. “Specifications for Distribution Service” means an exhibit to the WDSA that is required for City to interconnect Customer’s facilities to PG&E’s distribution system.

j. “Uncontrollable Forces” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or other cause beyond the reasonable control of a Party that could not be avoided through the exercise of commercially reasonable efforts.

k. “Unrecovered Costs” means the sum of: (i) all Interconnection Costs that were previously incurred by City or committed to by contract or required by law, and which have not been previously paid by Customer; and (ii) any penalties, fees, or liabilities City may be required to pay to any third party as a result of termination of this ESA.

l. “WDSA” means the existing Wholesale Distribution Service Agreement between City and PG&E.

Section 2. TERM AND TERMINATION

a. This ESA will become effective upon execution by the Parties.

b. This ESA will remain in effect so long as Customer receives Electric Service from City or until terminated by either Party pursuant to subsections (c) and (d) below.

c. Customer may terminate this ESA at any time upon 90 days’ written notice to City. If Customer terminates this ESA before City recovers all of the Unrecovered Costs, Customer shall reimburse City for the remainder of the Unrecovered Costs.

d. City may discontinue Electric Service to the Property in accordance with the SFPUC Rules.

Section 3. COMMENCEMENT OF SERVICE

Electric Service to the Property will commence when all of the following have occurred:

a. City and Customer have entered into any required Distribution or Service Line Extension Agreements that are necessary for City to provide Electric Service to the Property.

b. City and Customer have installed any required Distribution or Service Line Extensions.

c. If required to provide Electric Service, PG&E has filed with the Federal Energy Regulatory Commission one or more Specifications for Distribution Service to interconnect the Property to PG&E's distribution system, and has constructed any facilities PG&E is required to construct.

d. If required by City, Customer has executed an Intervening Facilities Control Agreement.

Section 4. CITY RESPONSIBILITIES

City will provide Electric Service to the Property during the term of this ESA as provided in the SFPUC Rules.

Section 5. CUSTOMER RESPONSIBILITIES

a. Customer will take Electric Service from City until such time as this ESA is terminated pursuant to Section 2.

b. Customer will reimburse City for its Interconnection Costs, if any, as set forth in Section 6.

c. Customer will be responsible for the cost of any Distribution or Service Line Extensions necessary to provide Electric Service to the Property, to the extent those costs are allocated to Customer pursuant to the SFPUC Rules.

d. Customer will be solely responsible for any Nonbypassable Charges or Departing Load Charges imposed by PG&E for Electric Service to the Property.

e. Customer will pay for Electric Service to the Property at the rates set forth in the applicable SFPUC Rate Schedules and in accordance with the SFPUC Rules.

Section 6. INTERCONNECTION COSTS

a. If City is required to pay a Service Initiation Fee to PG&E in order for the City to provide service to the Property, Customer will reimburse City for the Service Initiation Fee. City will return to the Customer within thirty days any portion of the Service Initiation Fee that is refunded to the City by PG&E minus any reasonable costs incurred by the City in connection with the Electric Service initiation.

b. If City submits an application to PG&E for wholesale distribution service to the Property, PG&E may notify City that: (i) PG&E will need to install additional equipment in order to provide Electric Service to Customer; and/or (ii) City will need to install additional equipment in order to provide such Electric Service. City will inform Customer in writing of the estimated costs for any such equipment. Unless within ten days of receipt of the cost estimate, Customer directs City in writing to terminate this Agreement or the City and the Customer otherwise agree in writing, Customer will reimburse San Francisco for its actual costs of any such additional equipment within thirty days of receipt of an invoice for such costs from City.

Section 7. DISPUTE RESOLUTION

a. For disputes related to this ESA that the Parties have been unable to resolve through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association, under its Commercial Mediation Procedures, or such other

mediator agreeable to the Parties.

b. Such mediation shall be non-binding, and any Party not satisfied with the result of the mediation may opt for litigation.

c. Each Party shall bear its own costs associated with mediation.

Section 8. UNCONTROLLABLE FORCES

a. Neither Party shall be considered in default in the performance of any obligations under this ESA when such failure of performance shall be the result of Uncontrollable Forces.

b. Nothing contained in this Section shall be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate or other authorization, or enter into other contracts or commit to financing arrangements, which contain conditions or terms that the Party determines are unduly burdensome. Nothing in this Section shall be interpreted to excuse the negligence or lack of due diligence by the Party unable to perform its obligation.

Section 9. INDEMNITY

a. Customer agrees to defend, indemnify and hold harmless City, and City's commissioners, officers, employees and agents (City's Indemnitees) from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of or in any way connected to the performance of this ESA, except those arising by reason of the sole gross negligence or willful misconduct of City or its Indemnitees.

b. In the event of concurrent negligence of City or its Indemnitees and Customer, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified. Customer shall have no authority to settle an action against City or its Indemnitees without the advance written consent of City, which consent shall not be unreasonably withheld.

Section 10. GENERAL PROVISIONS

a. This ESA may be amended or modified only in writing, subject to the same approval process required for this ESA.

b. No waiver by any party of any of the provisions of this ESA shall be effective unless in writing and signed by the SFPUC Assistant General Manager, Power or the _____ of Customer, and only to the extent expressly provided in such written waiver.

c. This ESA, the SFPUC Rules, and the SFPUC Rate Schedules contain the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein.

d. Electric Service under this ESA is subject to the SFPUC Rules, which are incorporated into this ESA in their entirety. Where there is a conflict between the SFPUC Rules and this ESA, the terms and conditions of this ESA shall prevail.

e. The section and other headings of this ESA are for convenience of reference only and shall be disregarded in the interpretation of this ESA.

f. This ESA may be executed in two or more counterparts, each of which shall be deemed an original agreement, but all of which taken together shall constitute one and the same instrument.

g. The formation, interpretation, and performance of this ESA shall be governed by the laws of the State of California. Venue for all litigation relating to the formation, interpretation, and performance of this ESA shall be in San Francisco.

h. Should the application of any provision of this ESA to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then: (i) the validity of this ESA shall not be affected or impaired thereby; and (ii) such provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

i. By executing this ESA, each Party represents and warrants to the other that it has full right and authority to enter into this ESA.

Section 11. NOTICE TO THE PARTIES

Unless otherwise indicated elsewhere in this ESA, all written notices or communications sent by the parties may be sent by registered or certified U.S. Mail, by a nationally recognized overnight courier, or fax, and shall also be sent by electronic mail, to the following persons:

To City:

Assistant General Manager, Power
Francisco Public Utilities Commission
Golden Gate Avenue, 13th Floor
Francisco, CA 94102
Tel:
Fax:
Email:

San
525
San

To Customer:

IN WITNESS WHEREOF, City and Customer have executed this ESA as of the date of the last signature below.

CITY AND COUNTY OF SAN FRANCISCO

[CUSTOMER NAME]

By: _____
Assistant General Manager, Power
San Francisco Public Utilities Commission

By: _____
[Title]

Dated: _____

Dated: _____